

CITY OF ROCKVILLE PLANNING DIVISION
STAFF REPORT

February 19, 2004

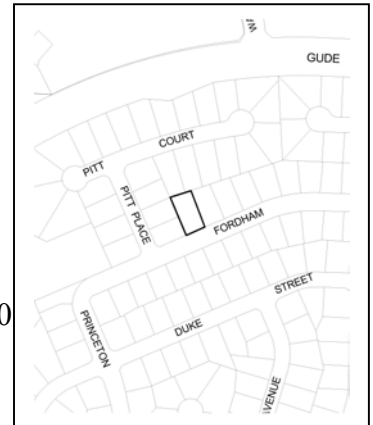
SUBJECT:

Special Exception Application SPX2003-00338

Applicant: Sophia & Spyros Rozakis
823 Fordham Street, Rockville, Maryland 20850

Planning Commission Review Date: February 25, 2004

Board of Appeals-Public Hearing Date: March 6, 2004



REQUEST:

In accordance with Section 25-296 of the City's Zoning Ordinance, the applicants' seek special exception approval to formally establish an existing accessory apartment on the lower level of their home which is located in the R-90 (single family detached, restricted residential) Zone.

RELEVANT ISSUES:

- Applicant must comply with all conditions of approval as recommended herein.

STAFF RECOMMENDATION:

Approval is recommended subject to full compliance with the following conditions:

1. The accessory apartment must be established and utilized as represented in the application request as submitted.
2. The owner/applicant must comply with the certification requirements of the "property maintenance code."
3. The accessory apartment cannot house more than three persons.
4. The special exception is granted solely to the property owner/applicant and is not transferable with the property in the event of change in property ownership. Said special exception expires if the owner sells the property or if the applicant no longer occupies any portion of the dwelling.
5. If the special exception expires, the accessory apartment must be removed and dismantled or otherwise rendered inoperative within thirty (30) days of the date of expiration.

6. The owner/applicant must comply with all applicable regulations governing accessory apartments as well as all rental-licensing requirements.

7. The above noted conditions of approval must be duly recorded among the land records of Montgomery County so that any future purchaser of the subject property is aware that the accessory apartment must be removed or a new special exception application filed and approved upon transfer of ownership.

Note: In order to record the conditions, staff will provide the applicant with a form of "declaration"; the document and legal instrument the applicant must complete and file with the office of land records.

ANALYSIS:

Property Description

The subject property is located on the north side of Fordham Street, approximately 120 feet east of Pitt Place and 900 feet west of Auburn Avenue. The applicant's property is approximately 12,638 square feet in size, located on Block A Lot 29 in the College Gardens residential subdivision. The property is improved with a two-story single family, detached dwelling, which is of frame and masonry construction. Located on the east side of the home is a partially enclosed carport, which has a front garage door, with lattice installed on the side and rear of the attached carport structure. Based on field observations, the site's driveway appears to have the capacity to accommodate three (3) conventional sized vehicles.

On the upper level of the applicants, two story home are three (3) bedrooms, one full and one half bathrooms, kitchen and dining room, and living room. Located on the lower level of the dwelling are two bedrooms, a full bathroom, and kitchen with seating area, a laundry and furnace room, and a living/family room. The applicants affirm that when they purchased the home in the mid 1980s, the small kitchen and bedrooms located on the lower level of the dwelling, existed when they purchased the home. Pedestrian access into the dwelling is provided by way of the front main entrance, and via side and rear entrances.

The site's topography ranges from gradual to pronounced surface sloping. The surface elevations of the rear yard are higher than the surface grades of the side and front yard areas of the site. The surface grades around the side and front base of the house are relatively flat but begin to gradually slope downward, as they move away from the house and as they form the front yard area of the site.

Located at the rear northeast corner of the home's carport, is an accessory building, which apparently is used for storage and other miscellaneous purposes. The subject property contains several mature trees and a modest amount of planted materials located in the front and rear yard

areas of the site, ranging in species and size.



Aerial overview of 823 Fordham Street

Proposed Site Use

In accordance with applicable requirements of the City of Rockville Zoning Ordinance, the applicants seek approval to formally retain the right to continue use of a two-bedroom accessory apartment located on the lower level of their home at 823 Fordham Street. The applicants/owners of the property affirm that the kitchen, full bathroom, and bedrooms located on the lower level of the home, existed at the time they purchased the home in the mid 1980s. They note that the unit has been leased/rented over the course of the past years, although not on a continuous basis. However, based on available City records, there is no record that the previous and/or current owners of the property ever filed or was granted special exception approval to install and establish the accessory living unit as it exists today.

The applicants' accessory apartment came to the attention of the City's Code Enforcement Division via a complaint filed by a neighboring property owner, informing the City that the applicants' home contained an illegal accessory apartment, which was being used for rental purposes. In order to retain the right to continue using/leasing the unit, the applicants submit the subject special exception request. Based on the information provided, and confirmed via staff site visits, the accessory apartment is comprised of a small kitchen with seating area, two bedrooms, and a full bath.

The attached floor plans show interior access between the accessory unit and the main dwelling is made possible via a doorway located at the base of the interior stairway, which leads up to the first

level of

the dwelling. Such direct access however is controlled/restricted between the accessory apartment and the remainder of the dwelling. Exterior access to the proposed accessory apartment will be provided via the (west) side exterior entrance door, located on the ground level of the applicants home (See Exhibits "1 & 3"). Exterior entry and exit to/from the front portion of the main single story dwelling will continue to be via the dwelling's main front entrance.

The accessory apartment is currently being leased to one (1) tenant. Based on available information, the current tenant does not own nor maintain a vehicle at the subject location. Based on field observations, if the applicants decide to rent the accessory unit in the future to a tenant who has a motor vehicle, the site driveway is large enough to readily accommodate the owners and a tenant's vehicles. It is also important to note that the subject property has eighty feet of lot frontage along Fordham Street, ample on-street parking area to accommodate additional vehicles being driven by person visiting the applicants home.

The applicants have been informed that the presence of the stove, in addition to the presence of the bath and bedrooms located on the lower level of the home are deemed to constitute an accessory apartment, as per Section 25-1 of the Zoning Ordinance. Thus in order to retain use of the stove as an integral component of the independent living quarters located on the lower level of the applicants' home, requires approval of the special exception as submitted. Staff has been informed that at present time the applicants have shut off electrical power to the stove, pending formal resolution of the subject special exception.

Applicable Sections of the Zoning Ordinance & Staff Assessment

In accordance with Section 25-296 of the Ordinance accessory apartments are permitted in the R-90 Zone by grant of special exception. In accordance with Section 25-338 of the Ordinance the Board of Appeals shall not grant any petition for special exception unless it finds from a preponderance of the evidence of record that:

1. The proposed use will not adversely affect the City's Master Plan (the Plan), Zoning Ordinance, or any other applicable law/s; and

The subject use does not violate or adversely affect the Plan or any known laws of the City of Rockville. The applicant submits the request in order to bring the property into full compliance with the Ordinance, i.e., retain the use of the existing stove now located in the existing independent living quarters located on the lower level of the applicants home. The land use designation of the property as assigned by the Plan, is for detached residential (medium density – 2.5 to 4 dwelling units per acre) land usage, which is consistent with the property's R-90 zoning classification. By allowing accessory apartments in residential zones as special exception uses, it is inferred from the Ordinance that these residential uses are appropriate and compatible with other uses in the zone, if it can be

shown that these accessory units will not have an adverse impact on neighboring properties. In order for the applicant to

bring the subject property into full compliance with the Ordinance, i.e., formally establish an accessory apartment and continue to lease the primary dwelling, the applicant requests the subject special exception be granted as submitted.

2. The proposed use at the location selected will not: a) Adversely affect the health and safety of residents or workers in the area; or b) Overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements; or c) Be detrimental to the use or development of adjacent properties or the neighborhood; and d) Change the character of the neighborhood in which the use is proposed, considering services currently required, population density, character and number of similar uses; and

The applicant seeks special exception approval to formally establish the existing accessory apartment, which they affirm was installed on the lower level of the home when they purchased it in the mid 1980s. The applicants affirm that the accessory unit has been leased over the course of the past years, although not on a continuous basis. As per the Zoning Ordinance accessory apartments are deemed to be a subordinate use of a single family detached dwelling. The applicant's home (inclusive of the accessory apartment) will remain the predominate use of the property, e.g., a single family detached dwelling. Per the Ordinance, *dwelling* means a building or portion thereof arranged or designed to provide living facilities for one (1) or more families. A *dwelling, detached* means a building arranged or designed as a dwelling and entirely separated from any other building or structure by space on all sides. This term includes a one-family dwelling that is modified to include an accessory apartment approved by special exception (ref. Section 25-1 of the Ordinance).

While there is no physical evidence that abutting properties have been and/or will be adversely impacted by the applicant's formal establishment of the existing two bedroom accessory apartment, staff has received correspondence from two neighboring property owners, which is included in this staff report, objecting to the granting of the special exception as submitted. As of this writing staff has also spoken to two other persons who identified themselves as residents of the community who also expressed concerns about the applicants' request. Staff notes that no records were found indicating that the property has been a nuisance to its neighbors, prior to the filing of the subject special exception request.

As of this writing there is no evidence that the applicant's formal establishment of the existing accessory apartment in the home, will be detrimental to abutting properties or the use and development of neighboring properties. There is no evidence the accessory apartment has or will pose a concern to the health, safety and welfare of persons living or working in the community. Based on available City records, the applicants had a rear home addition constructed onto the rear of the home several years ago, but the addition did not enlarge or physically alter the accessory living unit as it exists today. With the exception of the complaint that was filed by a neighboring home

owner, which prompted the applicants filing of the subject special exception, staff has found no other record or any documented complaint from surrounding or neighboring property owners that rental and/or use of the existing

accessory living unit has adversely impacted on the peace and tranquility of the community in which it is located. However, during the processing of the subject request, staff spoke to two (2) persons who identified themselves as residents of the community, who expressed concerns about the application request.

The applicants' home is located in the College Gardens residential subdivision, one of the older more established residential communities in the City of Rockville. Public water and sewer serve the site and there is no record that those services required and/or will require major upgrade or retrofit to continue to serve the applicants home and accessory living unit. Existing storm drainage, sanitary sewer, and other public improvements within the subject site are adequate and will not require modification or improvement to accommodate the accessory unit. As noted the accessory unit is located on the lower level of the existing two story home and as such there is no outward evidence of the presence of the accessory unit from the neighboring properties.

Most of the homes immediately abutting the applicants' home are also two-stories in height and vary in degree of design. If the accessory apartment is utilized and occupied as presented in the subject request, the single-family residential character of the site area should remain unchanged. The applicants affirm that they plan to continue to lease the unit to responsible tenants, who they believe will not create a nuisance and behave in an undesirable manner in their home. In submission of the request, the applicants have been made aware that they must maintain the principal dwelling as their primary residence and comply with any and all conditions of approval that the Board of Appeals might impose if the special exception is granted as requested. Such compliance serves to insure that the health, welfare, and safety of the community will not be adversely impacted by the proposed use.

Based on the information provided, it is unlikely that the amount of vehicular traffic generated from the applicants' property, due to the formal establishment of the accessory apartment, will significantly impact or overburden site area roadways. As previously noted, the subject property's driveway is large enough to accommodate approximately three (3) conventional sized vehicles. If future tenant/s occupying the accessory unit own a vehicle that could not be parked on site, there is parking available along the site's street frontage on Fordham Street.

Lastly, the availability and/or delivery of public services within the subject site area will not be altered or impacted by the requested site use, i.e., public schools, police, fire & rescue, trash collection, street maintenance & repair, snow removal, etc. Since the City's Zoning Ordinance restricts the number of persons who can legally occupy the accessory unit, the population density of the site area should not be materially impacted. Also, since such land uses are permitted only by grant of special exception, there is no reason to believe the formal establishment of the applicants

accessory unit will bring about the proliferation of similar land uses within the site area.

3. The proposed use complies with the requirements of the Ordinance applicable thereto.

Submission of the subject special exception request represents the applicant's efforts to satisfy and comply with all Zoning Ordinance requirements in order to legally establish an accessory apartment at the subject location which is in the R-90 Zone.

In addition to satisfying the above (general) "standards for granting" a special exception request, as per *Section 25-372(b) of the Ordinance the following "special development and use requirements" are applicable to the use as proposed:*

- 1. An accessory apartment must be part of or have at least one party wall in common with the main dwelling. An accessory apartment may not exist in an accessory building.**

The accessory apartment is located on the lower level of the existing two-story home.

- 2. Only one accessory apartment may be created in or attached to an existing one family detached dwelling.**

The applicants accessory unit will be the only such use on the subject property.

- 3. Such use is not allowed on lots which: a) are occupied by a family of unrelated persons; b) contain another apartment, rooms for rent, a boarding house; and/or c) where any other rental uses exist.**

The applicants affirm that they are the owners of the subject property/dwelling. There will be no other accessory apartment or rooms for rent in the applicant's home. As noted, the applicants currently lease the accessory unit to a single tenant. They do not propose to convert other portions of the home for rental purposes, nor will the dwelling be used as a boarding house. The applicants further affirm that they will occupy and maintain the main dwelling as their primary residence.

- 4. Both the main dwelling and the accessory apartment comply with all appropriate standards, including off-street parking requirements.**

As of this writing, the subject property is in general compliance with all known development standards and regulations of the R-90 Zone. As noted, the site's driveway has the capacity to

accommodate approximately three conventional sized vehicles. Section 25-395(11) of the Zoning Ordinance requires a minimum of two (2) on-site parking spaces be provided for single-family residential dwellings. Section 25-395(13)b. of the Ordinance requires one and one-quarter (1¼) parking spaces for each apartment with two or more separate bedrooms in a

multiple unit dwelling. As per this provision, the establishment of the two-bedroom accessory apartment would require the existing site driveway to accommodate three (3) vehicles.

Staff does notes that in accordance with Section 25-372(f) of the Zoning Ordinance, entitled *Additional Conditions*, the Board of Appeals may protect and limit adverse impacts on adjacent properties and the neighborhood, by limiting the total number of motor vehicles that may be parked on the lot, and/or by limiting the total number of vehicles that may be utilized and parked on the street, by the occupants of both the accessory apartment and the main dwelling. The Board can allow, as a condition of approval, the applicant to park a vehicle on the street, if it deems an additional parking space is needed, thus eliminating the need to accommodate three (3) vehicles on-site. Based on the manner in which the accessory unit is used (i.e., occupied by a single tenant) staff believes that the design capacity of the site driveway, supplemented by available on-street parking, insures that site parking requirements will be fully satisfied.

5. Any separate entrance to the accessory apartment must be located so that the appearance of a single-family dwelling is preserved.

The accessory unit's exterior entrance is located on west side of the dwelling and does not detract from the single-family appearance of the applicant's home. Since the entrance is located on the ground level of the dwelling, and partially screened by fencing, it is not overly visible from the site's street frontage.

6. All external modifications and improvements to the single family detached dwelling in which the accessory apartment is to be created or to which it is to be added must be compatible with the existing dwelling and surrounding properties.

There are no external modifications or improvements proposed to the applicants' home in which the accessory apartment will be located.

7. All modifications to the lot must be compatible with surrounding properties.

The applicant proposes no modifications to the lot in order to accommodate the establishment of the accessory.

8. **The accessory apartment must show and utilize the same street address (house number) as that of the main dwelling.**

No separate address will be used for the accessory apartment.

9. **No variance may be granted to accommodate an accessory apartment.**

No variance is needed to formally establish the existing accessory apartment.

10. **The accessory apartment may not house more than three (3) persons and must be subordinate to the main dwelling.**

The applicant has been made aware of the occupancy restriction and that the proposed accessory unit is a subordinate use of the main dwelling.

(c) Ownership Requirements

- (1) **The owner of a lot on which an accessory apartment is located must occupy one of the dwelling units, except for bona fide temporary absences not exceeding six months in any twelve-month period. The Board may increase the period of temporary absence at any time upon finding that a hardship would otherwise result. Any request for an extension of the period of temporary absence made subsequent to the initial grant of special exception shall be made in compliance with procedures for modification of a condition of special exception.**
- (2) **For the purposes of this section, "owner" means an individual who owns a substantial equitable interest in the property as determined by the Board.**

The applicant affirms that the dwelling located at 823 Fordham Street is their primary residence and that they are the owners of the property.

Lastly, the Board of Appeals must make the following findings in addition to all of the other noted findings and requirements in granting the subject special exception request:

1. **That such use will not constitute a nuisance because of traffic or number of people, and will cause no objectionable noise, odors, or physical activity.**

Based on the applicants' current use of the accessory unit, there is no evidence that the formal establishment of the accessory unit will generate excessive amounts of vehicular traffic. As noted,

the applicants intend to continuing leasing the unit to the current tenant. If the applicant rents the unit to a tenant or tenants who own a vehicle, on-street parking is available along the site's street frontage.

In its consideration of the application request, the Board of Appeals might consider limiting the number of persons whom may occupy the accessory unit. By restricting the number of persons who may reside in the accessory unit, should help to limit the amount of physical activity and/or noise generated from the subject site. The unit is located on the ground floor level of the home, which has windows that allow ample sunlight and the free flow of air in and out of the unit. Also, there is sufficient physical separation between the applicant's home and neighboring homes to the side and rear yard areas of the site. Exterior pedestrian access to the accessory unit will be provided via the front stone walkway that leads from the front of the dwelling to the rear side of the home. Staff found no evidence that the formal establishment and continued use of the accessory unit, will create or cause excessive site activity, heighten noise levels, or generate added vehicular traffic within the neighborhood, if the unit is occupied as proposed.

2. That such use will not adversely impact parking or the traffic situation in the neighborhood.

The site driveway has the capacity to accommodate a minimum of three (3) conventional sized vehicles. Since the applicants have agreed to limit the number of persons that rent the unit to not more than two (2) people, there is no evidence that the establishment of the accessory apartment will alter or adversely impact parking patterns within the subject site area. While Fordham Street is a conventionally sized residential street, there should be sufficient on street parking (if needed) to accommodate a vehicle owned by the tenant/s residing in the accessory unit, if it cannot be parked on site. On those occasions when the applicants and/or their tenant/s have guests, there should be sufficient on-street parking to accommodate such short-term parking needs. Little if any appreciable impacts on neighborhood parking and traffic generation are anticipated.

Based on all of the noted factors as reviewed in this staff report, staff recommends that Special Exception Application SPX2003-00338 be approved subject to the conditions referenced on pages one and two of this report.

COMMUNITY NOTIFICATION PROCESS

Notification cards were sent to abutting property owners and surrounding community residents informing them of the filing of the request and the days of the Planning Commission meeting and Board of Appeals public hearing, at which time the request will be publicly heard and considered. A total of 289 notices were sent to property owners located within the site area. A list of addressees is contained in the project's application file, available for public review and inspection.

/cdc

Attachments

Attachments "A thru D" – Letters of Opposition

Exhibit "1" – House Location Survey

Exhibits "2 & 3" – Floor Plans